

Statement in Opposition to Montana SB 162

Legislation that requires every assignment of a mortgage to be recorded is unnecessary and costly to homeowners.

- **The bill is unnecessary.** Public policy rationales for the bill are unsupported. The main reason usually cited in support of these bills is that homeowners need access to information about who owns their loan from the public land records. The land records have not provided disclosure of the ownership of loans since the advent of the secondary market. Agents (like MERS and mortgage loan servicers) have generally held the mortgage lien on behalf of the owners of the loan; a concept well recognized by the law. Moreover, since 2009, Federal law requires disclosure to homeowners about the owners of their loan.¹ The MERS® System also provides free access (through a toll free telephone number or the internet) to the general public to identify the current servicer for loans registered on the MERS® System, and the identity of the owner of the loan to the homeowner. The fiscal rationale of the increased government revenues from recording fees ignores the costs of a larger staff that will be needed to process the increased work-load in a timely manner.
- **The bill is anti-consumer.** Homeowners will bear additional costs associated with recording fees and the need for added infrastructure for lenders and servicers to process these assignments. The cost of the first assignment is directly charged to the homeowner at closing; costs of subsequent assignments will be passed on indirectly through higher fees and interest rates charged by lenders.
- **The bill will make for uncompetitive lending in Montana.** This requirement does not exist in any other state. If enacted, this bill will result in higher costs and more complexity in the law, which will cause national lenders to deploy more of their capital in those states where market conditions are more favorable and less capital in Montana.
- **Homeowners will bear the cost and consequences of a missing intervening assignment.** This bill overturns existing state law that has been in place for hundreds of years. Recording liens is for the benefit of creditors to provide notice to third parties of their lien. There are often intervening transfers that do not impact the homeowner; they are often for short periods of time and creditors elect not to record them for reasons of cost and efficiencies. Regardless of any statute, in many cases, intervening transfers are not recorded because, albeit unintended, people make mistakes.² Servicers and title agents will have difficulty identifying that all of the intervening transfers have been identified because notes in the secondary market transactions are usually endorsed in blank and transferred by delivery, which may prevent servicers from being able to foreclose and title agents from insuring title because they have no method to reliably identify all intervening assignments.

If you have comments or questions about this statement, please contact William Hultman, Vice President, Legislative Affairs, at billh@mersinc.org or (703) 761-1284.

¹ Federal legislation passed in 2009 (Section 404 of the Truth in Lending Act) requires that anyone who acquires ownership of a mortgage loan must provide the borrower with a notice that the acquirer is the new owner (and if they use a servicing agent to collect payments, the name of the servicer). The Section 1463 of the Dodd-Frank legislation enacted in 2010 also requires servicers to disclose the identity of the owner of the loan within ten days upon written request from the borrower.

² Contrary to many assertions otherwise, MERS was created because of challenges in the industry resulting from problems associated with missing intervening assignments.

QUICK FACTS

January
2015

MYTHS vs. FACTS: THE MERS® SYSTEM, MERSCORP HOLDINGS, INC., AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

MYTH #1: MERS has failed to record transfers of mortgage loans in the public land records.

FACT: At closing, the lender and borrower agree to appoint Mortgage Electronic Registration Systems, Inc. (MERS) as the mortgagee on the mortgage or deed of trust. This means that when a MERS® System member sells the loan to another MERS® System member, legal title to the mortgage remains with MERS and the need for an assignment is eliminated.

MYTH #2: MERS hides the chain of title so that borrowers can no longer see who owns their loans.

FACT: The public land records exist so that third parties are on notice that there is a lien on a property. MERS makes it easy for the borrowers to identify the servicer and owner of a loan that's been registered on the MERS® System (see Myth #3 below).

MYTH #3: MERS makes it harder for borrowers to identify the servicer and owner of their mortgage loans.

FACT: MERS actually makes this EASIER. We have a toll-free number (888-679-6377) and website (www.mers-servicerid.org) that the public can access to find the current servicer—and where borrowers can find the owner—of any loan registered on the MERS® System. The MERS® System is the only

national database with this information free and available to the public.

In addition, under federal law, borrowers are entitled to receive notification when the ownership of their loan changes. Servicers are also required under the Truth In Lending Act to respond to written borrower inquiries as to the ownership of their loans.

MYTH #4: Mortgages with MERS as the mortgagee were not recorded in the public land records and MERS has created an alternate recording system that's private and proprietary.

FACT: The MERS® System Rules requires that all mortgages with MERS as the mortgagee be recorded in the public land records and all required fees were paid. The MERS® System is not a legal system of record nor a replacement for the public land records. MERS' objective is not to replace county recorders; in fact we rely on the public land records to facilitate our business.

MYTH #5: Since MERS is not the lender, it does not have the right or "standing" to foreclose.

FACT: Because MERS is the mortgagee and common agent for all loans on the MERS® System, MERS has the right to act on behalf of the lender, which translates to our ability to foreclose

BENEFITS WITH MERS®

Reduces cost of homeownership.

- Eliminates breaks in the chain of title
- Hard dollar savings on each loan for homeowners and lenders

Provides transparency.

- Identity of servicer and investor available for FREE to homeowners via phone or Internet
- Used by lenders to find undisclosed liens

Used by governments and code enforcement officers to find companies responsible for maintaining vacant and abandoned properties.

Simplifies lien releases when a lender goes out of business.

Increases efficiency in sale of loans and servicing transfers in secondary market.

Mortgage Identification Number (MIN) is assigned to each loan, used for tracking.

WITHOUT MERS®

Lenders would have to rely on paper recording with its inherent processing errors.

Recorders would have to staff according to the ebb and flow of mortgage activity.

There would be breaks in the chain of title.

The cost of homeownership would be higher.

on a borrower. Courts in all 50 states have upheld our role in this regard. However, we have changed our business process and no longer engage in foreclosures.

MYTH #6: MERS caused securitization.

FACT: Securitization began in the 1980s, before the company was founded. The MERS® System was launched in 1997 in response to the challenges created by growth in mortgage origination and securitization in the 1990s.

MYTH #7: MERS stores mortgage documents that were previously kept by the servicer or investor.

MERS doesn't hold any documents on behalf of the servicer or investor. Just as it was prior to MERS, the recorded mortgage or deed of trust is typically held by the servicer, and the note is typically held by the custodian designated by the investor.

MEDIA CONTACTS

Janis L. Smith
Vice President
Corporate Communications
Tel: (703) 738-0230
Email: janiss@mersinc.org

Sandra J. Troutman
Director
Corporate Communications
Tel: (703) 761-1274
Email: sandrat@mersinc.org

